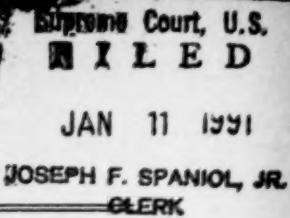


(2)
No. 90-962



In The
Supreme Court of the United States
October Term, 1990

ALAMO RENT-A-CAR, INC.,

Petitioner,

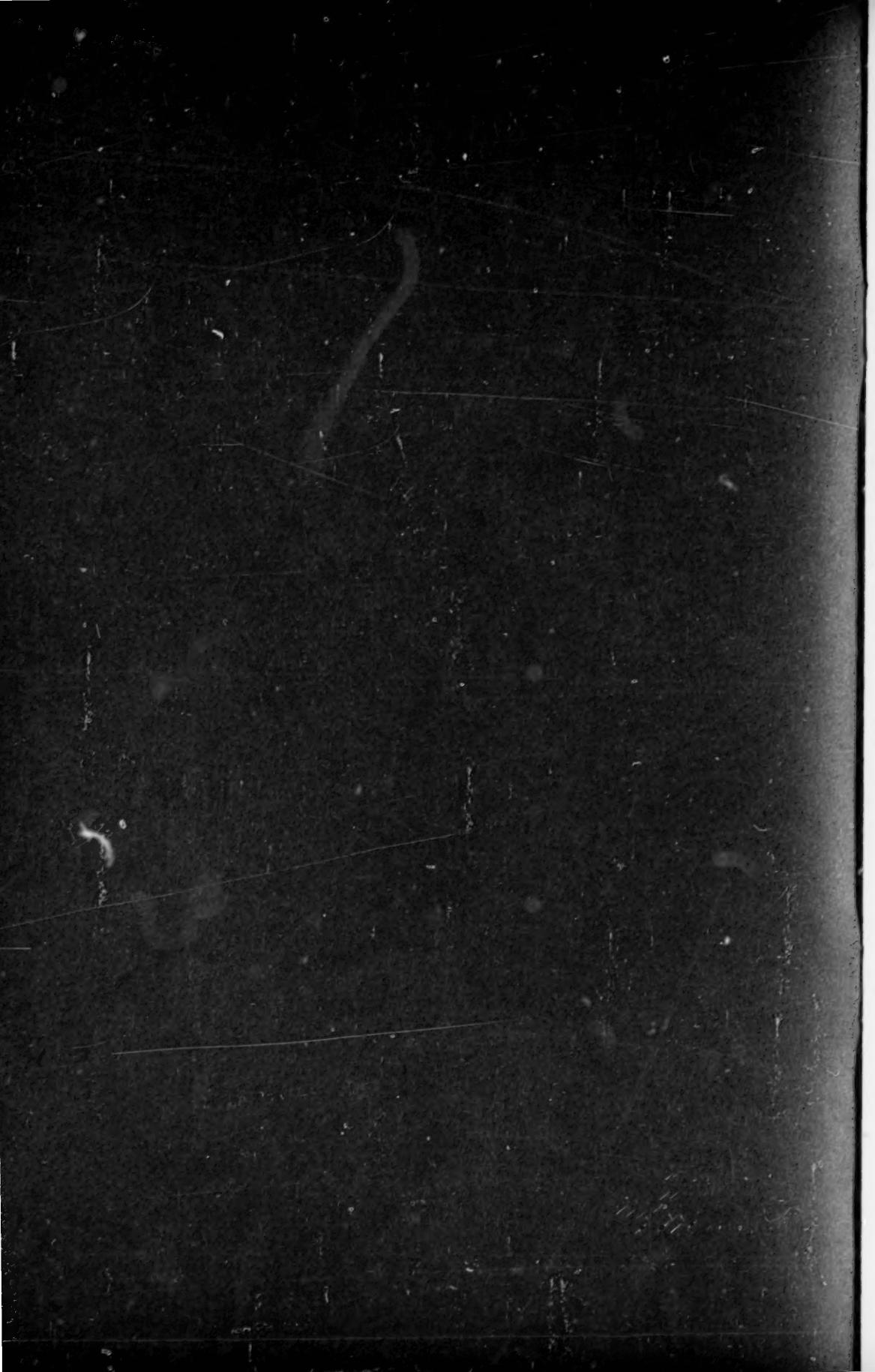
v.

SARASOTA-MANATEE AIRPORT AUTHORITY,
Respondent.

Petition For A Writ Of Certiorari To The
United States Court Of Appeals For The
Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

A. LAMAR MATTHEWS, JR.
(Counsel of Record)
FRAZER F. HILDER
THEODORE C. EASTMOORE
WILLIAMS, PARKER, HARRISON,
DIETZ & GETZEN
1550 Ringling Boulevard
Post Office Box 3258
Sarasota, Florida 34230
(813) 366-4800
Attorneys for Respondent



QUESTION PRESENTED

Whether the court of appeals erred in applying precedents of this Court in holding that a resolution of the Sarasota-Manatee Airport Authority, which required off-airport rental car companies to pay a fee for use of airport facilities, did not unreasonably burden interstate commerce.*

* The statement of Questions Presented in the petition is grossly misleading because it assumes facts directly contrary to facts established in the record and found by the district court and the court of appeals. For example: (1) The fee is 10 percent of gross receipts from intrastate *and* interstate deplaning customers equally. Plt. Exh. 52. (2) Both lower courts found that Alamo's use of the airport is *not* limited to providing transportation for its customers, but rather Alamo uses the existence of the entire airport to generate customers. Pet. A-9, R. 5-181-6. (3) The lower courts' findings contradict the assertion that the purpose or effect of this user fee was to burden interstate business to protect intrastate revenues. Pet. A-14, R. 5-181-4.

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Contents	ii
Table of Authorities	iii
Statement	2
Summary of Argument	5
Reasons for Denying Writ	6
The Decision Below Correctly Applies the Principles of This Court's Analysis of Airport User Fees.....	6
The Decision in this Case is Consistent With Deci- sions of Other Courts	11
This Case Does Not Have Broad National Signifi- cance	12
Conclusion	13

TABLE OF AUTHORITIES

	Page
CASES	
<i>Airline Car Rental, Inc. v. Shreveport Airport Authority</i> , 667 F.Supp. 303 (W.D. La. 1987).....	11
<i>Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Authority</i> , 825 F.2d 367 (11th Cir. 1987), cert. denied, 484 U.S. 1063 (1988).....	4, 7, 9, 11, 12
<i>Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Authority</i> , 906 F.2d 516 (11th Cir.) reh'g denied, ___ F.2d ___ (11th Cir. 1990)	4, 9, 10
<i>Club Car Rentals of Gainesville, Inc. v. City of Gainesville</i> , No. GCA 85-0177-MMP (N.D. Fla. May 6, 1988).....	12
<i>Conway v. California Adult Authority</i> , 396 U.S. 107 (1969)	2
<i>Evansville-Vanderburgh Airport Authority District v. Delta Airlines, Inc.</i> , 405 U.S. 707 (1972).....	6, 7
<i>General Rent-A-Car, Inc. v. Roberts</i> , No. 87-8345-Civ-Marcus (S.D. Fla. September 15, 1988)	11
<i>Interstate Transit, Inc. v. Lindsey</i> , 283 U.S. 183 (1931) ...	8, 9
OTHER	
Ch. 77-651, § 6, Laws of Fla	3
49 App. USCA § 2210(a)(9)	12

No. 90-962

In The
Supreme Court of the United States
October Term, 1990

ALAMO RENT-A-CAR, INC.,

Petitioner,

v.

SARASOTA-MANATEE AIRPORT AUTHORITY,
Respondent.

**Petition For A Writ Of Certiorari To The
United States Court Of Appeals For The
Eleventh Circuit**

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Sarasota-Manatee Airport Authority, respectfully prays that the Court deny the petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit.

STATEMENT

For the second time, petitioner, Alamo Rent-A-Car, Inc. (Alamo), wants this Court to award it an unjustified competitive advantage.

This case is not complicated. The record has been examined twice by the district court and twice by the court of appeals. The basic facts are established in the opinions of those courts.¹

As commercial aviation mushroomed following World War II, airports recognized that the passenger's journey did not end when he stepped off the plane. As part of their responsibility to make ground transportation readily available, airports contracted with "on-airport" rental car companies. R. 7-422.²

At Sarasota-Bradenton Airport at the time of the trial, there were identical agreements with five on-airport rental car companies (chosen by a bidding process) providing for counters in the terminal building, land for storage and servicing of the cars, and "ready" parking spaces adjacent to baggage claim areas. For all those facilities the companies paid negotiated rent. In addition to those rents, each company paid a user fee of 10 percent of gross receipts from all rentals. See Plt. Exh. 77, 78.

¹ Alamo's petition misstates the questions presented, the evidence and the holding of the Eleventh Circuit, as will be pointed out below. This is reason enough to deny the petition. Conway v. California Adult Authority, 396 U.S. 107 (1969).

² "R." refers to the record on appeal to the Eleventh Circuit. "Plt. Exh." refers to individual exhibits introduced in the district court which were part of the appellate record.

By contrast Alamo is one of a group of "off-airport" rental car companies. It has its counter and its storage-service facilities located a few minutes drive from the airport. Alamo picks up 90 percent of its customers in shuttle buses owned and operated by Alamo between Alamo's office and the passenger terminal area of the airport, making up to 100 such trips to the airport per day. R. 6-268, 271.

Apparently the activity of off-airport rental car companies at the Sarasota-Bradenton Airport was inconsequential before Alamo commenced operating there in 1978. R. 7-423. At that time they paid no fee or rent of any kind. But by late 1981, the 10 percent cost advantage and aggressive merchandising enabled them to siphon off so much business from the on-airport companies that respondent Sarasota-Manatee Airport Authority (the Authority) became quite concerned over the loss of revenue.³ Pet. Exh. 61.

³ The Authority has no taxing power. R. 4-118-8. It receives federal grants amounting to 90% of approved capital expenditures and state grants amounting to 5% of such expenditures. It must depend on "user fees" for substantial operating, maintenance and debt service expenses and for construction expenses not covered by such grants. R. 7-434, 437; Def. Exh. 18. The Authority is prohibited from incurring deficits. It is required by statute to establish user fees, by agreement or by resolution, which are sufficient at all times to pay operating costs and to pay the principal and interest on bonds including reserves for both purposes. Ch. 77-651, §6, Laws of Fla.

In 1981, approximately two-thirds of total operating revenues came from user fees related to the terminal area, the

(Continued on following page)

Consequently the Authority adopted the resolution which is the subject matter of this litigation. Plt. Exh. 52. In general, the resolution prohibits off-airport rental car companies from picking up customers on airport property without a permit. To obtain a permit, a company must agree to abide by traffic control rules and agree to pay a user fee of 10% of gross revenues *from only customers picked up at the airport. Id.*

Alamo immediately sued, claiming violation of the commerce clause and denial of equal protection and substantive due process rights guaranteed by the fourteenth amendment. Reversing the district court, the Eleventh Circuit held there was no denial of equal protection and remanded for consideration of the commerce clause and substantive due process issues. *Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Authority*, 825 F.2d 367 (11th Cir. 1987). Certiorari was denied, 484 U.S. 1063 (1988).

On remand the district court rejected Alamo's claims as to the commerce clause and due process. The Eleventh Circuit affirmed as to the 10 percent fee. *Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Authority*, 906 F.2d 516 (11th Cir.) *reh'g denied*, ___ F.2d ___ (11th Cir. 1990). Pet. A-1, B-1. The ruling as to due process is not challenged in the petition.

◆

(Continued from previous page)

balance from charges to general aviation, rental of land for non-aviation uses, etc. Plt. Exh. 128. Major categories of user fees were airline landing charges \$687,558, on-airport rental car companies \$661,235, parking lot \$324,318, restaurants \$129,018, with smaller amounts from limousines, taxicabs, gift shops, etc. *Id.*

SUMMARY OF ARGUMENT

This is the second case in which the Eleventh Circuit upheld the constitutionality of a user fee (10 percent of gross receipts from customers picked up at the Sarasota-Bradenton Airport) charged off-airport rental car companies. Alamo's original unsuccessful reliance on an equal protection theory was matched by its unsuccessful reliance on the commerce clause in the second appeal. This Court declined to review the first decision. The present petition contains nothing which would justify granting certiorari now.

The heart of this controversy is a fact question: What does Alamo use? In adopting the fee, the Airport Authority intended the fee to be compensation for Alamo's use of the existence of the entire airport to generate Alamo's customers, as at least 90 percent of Alamo's business consisted of deplaning air passengers. In contrast, Alamo has contended throughout that it uses only the roads on which it drives its shuttle vans to pick up customers, so that the 10 percent fee must be excessive when measured against that limited use.

The district court, in its last order, and the court of appeals, in both opinions, decided that fact question in accordance with the Authority's position. Alamo now seeks review of that fact decision. The cases relied on in Alamo's petition depend for their possible relevance on a holding that Alamo uses only the roads. To review the holding of the Eleventh Circuit this Court would be forced to pore through the record to examine the nature of the operation of this airport and how the rental car

business functions. We respectfully submit that would not be appropriate under these circumstances.

There is no conflict of the decision below with other cases such as might justify granting certiorari. The only federal cases dealing with this subject are on all fours with the holding of the court of appeals.

Finally, there is no special or important federal interest in supervising the manner in which the Authority discharges its statutory responsibility to raise sufficient revenue from the use of the airport to make it self-sustaining. This petition for writ of certiorari should be denied.

REASONS FOR DENYING WRIT

I.

The Decision Below Correctly Applies The Principles Of This Court's Analysis Of Airport User Fees.

In its opinion upholding the validity of the 10 percent fee in this case, the court of appeals carefully applied the principles enunciated by this Court in *Evansville-Vanderburgh Airport Authority District v. Delta Airlines, Inc.*, 405 U.S. 707 (1972). Since that opinion dealt with an airport user fee, it was recognized as more relevant than any other of this Court's multitude of opinions concerning the commerce clause.

In *Evansville*, the Court upheld a one-dollar charge on each enplaning air passenger. The analysis begins:

We therefore regard it as settled that a charge designed only to make the user of state-provided facilities pay a reasonable fee to help

defray the costs of their construction and maintenance may constitutionally be imposed on interstate and domestic users alike. . . . The facility provided at public expense aids rather than hinders the right to travel. A permissible charge to help defray the cost of the facility is therefore not a burden in the constitutional sense.

Id., 405 U.S. at 714.

In *Evansville*, the "users" of the state-provided facilities were the airline passengers. The discussion in that opinion is in that frame of reference. The users here are off-airport rental car companies. There are many other categories of users of airport facilities, some of which are customarily charged fees calculated by various formulas.⁴ If differing circumstances are taken into account, the *Evansville* standards are particularly appropriate for determining constitutionality of any fee charged any user of airport facilities.

The present Eleventh Circuit opinion, especially when read together with its earlier *Alamo* opinion, 825 F.2d 367, shows that the court of appeals understood *Evansville* and correctly applied the standards of this

⁴ Rejecting *Alamo*'s equal protection claim, the Eleventh Circuit upheld the "structure" of ground transportation fees at this airport: "The distinctions the authority has drawn are based upon its rational assessment of the relative benefits and the extent of use of each category of vehicles that enter the airport." 825 F.2d at 371. "[A]n off-airport car rental company that serves few airport passengers will pay a small fee, which in some cases will be lower than the flat fee that hotel and motel courtesy vehicle operators must pay." *Id.* at 373 (emphasis in original). See also note 3, *supra*.

Court to the facts of this case as provided by the record. The petition simply distorts the holding of the court of appeals and makes assertions not supported by the record. Pet. 13-15. Record citations are necessarily absent.

The inaccuracy of the entire petition is exemplified by its reliance on *Interstate Transit, Inc. v. Lindsey*, 283 U.S. 183 (1931). Pet. 11-12. That opinion is sound on its own facts, but of no precedential value here. The record here makes inapplicable the key sentence on which Alamo relies:

Accordingly, there is no sufficient relationship between the measure employed and the extent or manner of use, to justify holding that the tax was a charge made merely as compensation for the use of the highways by interstate buses.

283 U.S. at 190. Throughout this case Alamo has argued that the only use it makes of airport facilities is to drive its shuttle buses on airport roads. In reality, the "extent or manner of use" by Alamo is using the presence of the entire airport to generate customers. In the petition Alamo slyly uses the phrase "actual use" to mean use of roads only.⁵ Pet. 11.

⁵ Another example of record distortion is the assertion that "the Authority's Executive Director testified that it was not providing Alamo with any services." Pet. 13, citing R. 10-81-83. That witness did testify – at page 38 – that "we were not providing [off-airport companies] services, nor facilities." However, from the context it is clear that the witness was referring to counters and storage space such as provided the on-airport companies for rent separate from the 10 percent fee; he was not thinking of "providing" the entire airport as a source of customers. R. 10-37-43.

Alamo's persistence is serving only to prolong this case. In finding a rational relationship defeating Alamo's equal protection claim, the Eleventh Circuit said, "The authority could rationally conclude that *all* car rental companies received benefits from the presence of the airport." 825 F.2d at 374 (emphasis supplied).⁶ Then, in its second *Alamo* opinion, the court of appeals met Alamo's argument head on and discarded it: "Alamo does enjoy the indirect 'use' of the entire airport." Pet. A-5. *Interstate Transit* and the other cases said by Alamo to be conflicting are all inapplicable in the light of Alamo's use of the entire airport.

The finding of the fact that Alamo benefits from its use of the entire airport disposes of Alamo's contention

⁶ Three of the four Authority members and the airport manager testified that, as to both on-airport and off-airport companies, the 10% fee is intended to be a "user fee" for use of *all* the airport facilities to generate customers. R. 9-41 to 42, 69, 80; R. 7-439; R. 10-72, 78 to 80. The on-airport companies do not pay any part of the 10% for use of counter space or storage land; additional rent pays for that. The 10% fee in the resolution is not a charge for Alamo's use of the roadway to drive on. Alamo derives 90% of its business from the existence of the airport as an operating entity. If there were no landing strips, no ramps, no controllers, no terminal buildings, or no firemen and policemen, the airlines would not fly into this airport. Without the airlines, including their providing of car reservations and the important "fly-drive" vacation packages, Alamo would be out of business as a practical matter. It is in this way that Alamo "uses" the landing strips, the terminal buildings, and other amenities for the convenience of deplaning air passengers. Alamo is exactly as dependent on the entire airport for its economic opportunity as are the five on-airport companies which have for years been paying the 10% fee.

that the 10 percent fee is unconstitutionally excessive. Pet. 16-18. This portion of Alamo's brief rests on the remarkable assertion, "*It was undisputed* that the only use that Alamo makes of the airport is to pick up its pre-spared customers at the designated curb." Pet. 17 (emphasis supplied). Alamo ignores the Eleventh Circuit's discussion concluding that the fee is not excessive in relation to the Authority's costs, and the telling fact that income projected from payment of the 10 percent fee by off-airport companies would be only 4.66 percent of the Authority's total operating expenses. Pet. A-11-12.

Finally, the contention that the resolution is "unconstitutionally discriminatory" is utter nonsense. Pet. 18-21. First, Alamo has never before advanced this theory, raising it for the first time in the petition. Second, the commerce is air travel. The resolution shows on its face, and the courts below found, that the fee does not discriminate between intrastate and interstate travel. Plt. Exh. 52; Pet. A-3; R. 5-181-5. The record does not show, as to either on-airport or off-airport rental car companies how much business is split between the two categories of commerce.

As to ground transportation other than rental cars, the equal protection decision bars Alamo's present contentions of discrimination.

As to the Anti-Head Tax Act, the complaint included an allegation of violation of that statute. The district court dismissed that count on motion, and Alamo did not appeal. R. 3-92-8.

Consistent to the end, this part of the petition distorts the record as to the purpose of the Authority in adopting the resolution. The Authority had no sinister intention to lessen competition with on-airport companies or to increase prices to Alamo's customers. See discussion in first *Alamo* opinion, 825 F.2d at 372-374.

II.

The Decision in This Case is Consistent With Decisions of Other Courts

It has been demonstrated in section I above that there is no merit in Alamo's contention that the decision below conflicts with the decisions of this Court and of other courts of appeals. The cases cited in the petition at pages 11-16 are all distinguishable on the facts. Focusing on cases involving airport user fees on rental cars, it is significant that Alamo does not argue that even a single case from its lengthy list of similar cases contained in the petition at page 8, note 13, holds that such a fee violates the commerce clause. The situation is that three other federal district courts have upheld an airport user fee virtually identical with the fee involved in this case.⁷ *Airline Car Rental, Inc. v. Shreveport Airport Authority*, 667 F.Supp. 303 (W.D. La. 1987); *General Rent-A-Car, Inc. v. Roberts*, No. 87-8345-Civ-Marcus (S.D. Fla. September 15, 1988) (11th Circuit appeal stayed pending outcome of this

⁷ No federal court of appeals other than the Eleventh Circuit has considered the status under the commerce clause of the rental car user fee imposed by airports. As far as we are aware, these four are the only federal courts to rule on a gross receipts fee for off-airport rental car companies.

case, No. 88-6043); *Club Car Rentals of Gainesville, Inc. v. City of Gainesville*, No. GCA 85-0177-MMP (N.D. Fla. May 6, 1988) (copy of slip opinion at R. 5-171).

III.

This Case Does Not Have Broad National Significance.

In the event this Court should grant certiorari and ultimately rule in favor of Alamo, Alamo would be given a substantial cost saving, to be used as Alamo saw fit.

There is no guarantee that Alamo would pass on to its customers the amount of that cost saving. It might use it to increase advertising. It might increase dividends to stockholders. The result would benefit Alamo, not necessarily consumers.

Also, there is a possibility that if the Authority could not charge Alamo the 10 percent fee, the Authority might feel forced to discontinue charging on-airport rental car companies the parallel 10 percent fee, by reason of bargaining pressure or equal protection apprehensions. That would require increasing other user fees in order to produce adequate total revenue.⁸ In the first *Alamo* opinion, the Eleventh Circuit held that the overall structure of ground transportation user fees is rationally related to legitimate objectives of the Authority. 825 F.2d at 372. There is no indication in the record here that the same is not true of the other user fees. Thus there is no federal!

⁸ To obtain federal funds, an airport must satisfy the Secretary of Transportation that it has a user fee structure which makes the airport as self-sustaining as possible under the circumstances at that airport. 49 App. U.S.C.A. § 2210(a)(9).

interest, constitutional or otherwise, in disturbing the manner in which a local airport authority establishes the fees that it will charge rental car firms to use the airport.

Alamo was certainly entitled to contest the validity of the 10 percent fee. Now its constitutional theories have been rejected twice by the Eleventh Circuit. The petition does not show that the court of appeals was incorrect and, more important, does not show a significance which would justify review by this Court.

CONCLUSION

For the foregoing reasons, the writ of certiorari to the United States Court of Appeals for the Eleventh Circuit should be denied.

Respectfully submitted,

A. LAMAR MATTHEWS, JR.
(Counsel of Record)

FRAZER F. HILDER
THEODORE C. EASTMOORE
WILLIAMS, PARKER, HARRISON,

DIETZ & GETZEN
1550 Ringling Boulevard
Post Office Box 3258
Sarasota, Florida 34230
(813) 366-4800
Attorneys for Respondent